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No._____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

WALLACE L. JOYCE,
PETITIONER

V.

STATE OF CONNECTICUT,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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50 pp

QUESTIONS PRESENTED

1.) Personal property of the Petitioner including his clothing and a wristwatch was taken from the fire scene on January 29, 1990 for custodial caretaking. The next day, the property was transferred to the State Forensic Laboratory for chemical analysis without a warrant. Did the transfer of property for investigatory purposes without the Petitioner's consent and without a warrant constitute an illegal seizure under the Fourth Amendment to the United States Constitution?

2.) Does the State's perpetual possession of Petitioner's property from the date the property was transferred to the State Forensic Laboratory on January 30, 1990 to the present day constitute a continuous unlawful trespass against personalty that was not remedied by the State's execution of a warrant at the Office of the Clerk of the Superior Court on January 11, 1995?

3.) Did the United States Supreme Court envision the expansion of the independent source doctrine to include cases where personal property is held by the State for nearly five years without a warrant and where the earlier inadmissible test results are incorporated into the warrant application?

LIST OF PARTIES

All parties to the proceeding appear in the caption of the case on the cover page. This case does not involve any corporation and, hence, the mandate of Rule 29.6 is inapplicable.

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IN THE

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OCTOBER TERM, 1997

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Connecticut Supreme Court to review the merits appears at Appendix A to this petition and is cited at 243 Conn. 282.

The subsequent order respecting the Motion For Reargument and For En Banc Reargument is reproduced at Appendix B according to the requirements of Rule 33.1(c) and the Court's Memorandum respecting reproduction of documents in the Appendix. The order respecting the pro se Motion For Leave to Amend Defendant-Appellant's Motion For Reargument and For En Banc Reargument is reproduced according to the requirements of Rule 33.1(c) and the aforementioned Memorandum and appears at Appendix C. As of the date this writ was prepared by the Petitioner, neither order was published in the most current volume of the Connecticut Reports, namely, Volume 243.

JURISDICTION

The Connecticut Supreme Court rendered its panel decision in State v. Joyce on November 25, 1997. A copy of that decision appears at Appendix A.

Thereafter, a Motion For Reargument and For En Banc Reargument was timely filed in accordance with Connecticut's Joint Rules of Appellate Procedure on December 2, 1997. A Motion, filed pro se, For Leave to Amend Defendant-Appellant's Motion For Reargument and For En Banc Reargument was filed three days subsequent.

The Motion For Reargument and For En Banc Reargument was denied on December 10, 1997 and appears at Appendix B. The pro se Motion For Leave to Amend Defendant-Appellant's Motion For Reargument and For En Banc Reargument was dismissed on December 10, 1997 and appears at Appendix C.

The writ of certiorari is filed within ninety days after the order denying the Motion For Reargument and For En Banc Reargument as permitted by Section 3 of Rule 13 of the Rules of the Supreme Court of the United States. The statutory jurisdiction of this Court arises from its discretionary review power cited at 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, FOURTH AMENDMENT:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On January 29, 1990, Petitioner Wallace Joyce entered the home of his deceased father, hit the entranceway light switch just inside the door jam and was hit from the left side just seconds later with what Petitioner termed a "bolt" or "ball of fire." (Tr. transcript, pp. 1065, 1070). East Haven police, fire and medical personnel were dispatched to the scene where the sixty-one year old Petitioner was treated for extensive burns covering over 42% of his body most of which were justified to his left side. (Tr. transcript, pp, 179, 222, 1084).

In order to administer treatment, the clothing was cut from Petitioner's body and was left lying in the road.[1] (Tr. transcript, pp. 586, 1308). Detective Bruce Scobie removed the property of the Petitioner from the road and placed the personalty of the Petitioner in the trunk of the police cruiser so it "wouldn't be thrown out or lost." (Tr. transcript, pp. 586, 1308).

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[1]Forensic expert Michael K. Higgins of K-Chem Laboratories in Boston testified that any chemical testing of the clothes was necessarily contaminated by the way in which the clothing was handled at the scene. Indeed, Higgins testified that gas chromatography is such a sensitive test that mere odors in the trunk of the police cruiser could infuse into the clothing and be detected. Higgins testified that there were multiple points of cross-contamination in this case so that "if something was found on the clothing," it was not possible to determine "what the source of that petroleum product was." (Tr. transcript, pp. 1310-1311)

However, the next day it was determined by investigators that the property would not be returned to the Petitioner. Instead, Detective Scobie gave the Petitioner's property to the former Fire Marshal Frederick Brow who transported the clothing, without a warrant, to the State Forensic Laboratory for chemical testing. The testing revealed traces of a petroleum distillate "similar to" gasoline on some items of clothing. In an April 16, 1990 Motion to Suppress, Petitioner moved not only to suppress the results of these chemical tests in his first trial but moved for the return of his personalty transported to the State Forensic Laboratory and subjected to chemical analysis without a warrant. (See generally, 229 Conn. 10).

Among other issues, the Petitioner appealed to the intermediate appellate court on the basis of this Motion to Suppress asking for the immediate return of his property. The dissenting opinion of Justice Heiman noted that "the transportation of the clothing to the State Forensic Laboratory constituted an unlawful seizure." 30 Conn. App. 164 at 184.

Thereafter, Petitioner appealed to the Connecticut Supreme Court which agreed to hear the case sitting en banc. The Connecticut Supreme Court determined that the chemical testing of the clothing constituted an illegal search and suppressed the results of those tests under Article First, §7 of the Connecticut Constitution. 229 Conn. 10 at 27. The Court further found that it was not necessary to reach the issue of whether the transmittal of the clothing constituted an illegal seizure since

the chemical analysis constituted an illegal search. 229 Conn. 10 at 18. The Court did take judicial notice that Petitioner's wristwatch was among the property taken by investigators that remained wholly unaccounted for by the State. 229 Conn. 10 at 23, Footnote 15. The judgment of the trial court was reversed and the case was remanded. 229 Conn, 10 at 28.

In lieu of returning the personalty to the Petitioner or awaiting further proceedings by the trial court respecting the return of this property, investigators executed a search warrant, containing the results of the first illegal search, at the Clerk's Office of the Superior Court at 121 Elm Street, New Haven, Connecticut where the property was detained as exhibits of the first trial. The results of the second gas chromatograph tests were admitted in the second trial over Petitioner's October 16, 1995 Motion to Suppress.[2]

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[2] The results of the chemical analysis of Petitioner's clothing was referred to by the Connecticut Supreme Court as conclusive of gasoline. 243 Conn. 282 at 287. However, expert testimony proved that it is forensically impossible to make such a conclusive determination. (Tr. transcript, p. 1331).

Despite the inclusion of the first illegal test results in the warrant, a panel decision of the Connecticut Supreme Court held that investigators had probable cause[3] prior to the illegal intrusion constituting an independent source for the admission of the second test results. 243 Conn. 282 at 296. Although the Fourth Amendment was properly raised in this second and direct appeal to the Connecticut Supreme Court, the Court again declined to address whether an illegal seizure occurred under the Fourth Amendment of the United States. 243 Conn. 282 at 294. It is from this holding that the Petitioner respectfully asks the Highest Court that a writ of certiorari issue.

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[3]Although the United States Supreme Court does not review the factual findings of the lower courts, I wish only to apprize this Court that immediately after my incarceration, the certified police file was obtained and reveals in black and white terms that prosecution witnesses lied under oath to obtain my conviction. I understand that this matter has been referred to Governor John Rowland and to the Connecticut Supreme Court by the Ad Hoc Committee to Vindicate Wallace Joyce. I understand further that this matter has been referred by the Office of Governor John Rowland to New Haven State's Attorney Michael Dearington for his review.

REASONS FOR GRANTING THE WRIT

Petitioner asks that the United States Supreme Court exercise its discretionary jurisdiction in this case because the Connecticut Supreme Court has rendered a decision on the Fourth Amendment "that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court" as per Section (c) of Rule 10 of the Rules of the Supreme Court of the United States.

Simply stated, the ruling of the Connecticut Supreme Court in State v. Joyce, 243 Conn. 282 offends the logic and reasoning of the Court in Murray v. United States, 487 U.S. 533. In Murray, this Court said that there must be a genuinely independent source for the admission of evidence once an illegal intrusion occurs and that a genuinely independent source "may well be difficult to establish where seized goods are kept in the police's possession." 487 U.S. 533 at 542, See also, McGarry's Inc. v. Rose, 344 F.2d 416 and United States v. Silvestri, 787 F.2d 739.

The decision is Joyce renders the Court's aforesaid parenthetical meaningless. In Joyce, property was kept in an evidence locker without a warrant for nearly five years before a warrant was executed at the Clerk's Office of the Superior Court. The State never relinquished its control over the property despite Petitioner's April 16, 1990 Motion to Suppress requesting immediate return of this property. The dissent in Segura v. United States found 18 hour access to property without a warrant disturbing. In Joyce, Connecticut has determined that a five year detention of personalty without a warrant is acceptable.

Most importantly, the Joyce ruling overwrites the parameters of the independent source doctrine as set by this Court. The cases involving the independent source doctrine have been employed primarily where there is "administrative delays" or other minor faults on the part of law enforcement to timely execute a warrant but does not speak to bad faith on the part of the police. Indeed, there is a contemporaneity between the illegal intrusion and the eventual issuance of the warrant and a clearly independent source for its admissibility. Because of the strong public policy reasons behind ceasing the trafficking of contraband, Petitioner notes that the independent source doctrine nas been applied primarily in the seizure of drugs and related drug paraphenalia.

Likewise, the independent source doctrine has been applied principally to cases of illegal entry. Even if the independent source doctrine is applied to personal property such as clothing, one point is clear in the Murray decision. Whereas police should not be placed in a worse position because of the initial illegal intrusion, they must not be placed in a superior position. The holding in United States v. Ceccolini, 435 U.S. 268 (1978) makes clear that the more flagrant the initial illegality is, the more reason there is to suppress any and all evidence that can be perceived as deriving from the initial illegality.

In Joyce, the actions of investigators were bold and flagrant. They perceived no need on their part to secure a warrant before transporting Petitioner's property to the State Forensic Laboratory for testing despite state appellate decisions throughout the country recognizing that property of a medical emergency victim must be taken pursuant to a warrant when the purpose is investigatory, People v. Wright, 804 F.2d

866 (Colo. 1991), State of Maine v. Richards, 296 A.2d 129 (Me. 1972) and the mandate set down in Cady v. Dombrowski, that the community caretaking function cannot be used as a ruse but must be "totally divorced from the detection, investigation and acquisition of evidence relating to criminal activity." 413 U.S. 443 at 441.

As investigators initial actions were in flagrant violation of the Fourth Amendment in Joyce , investigators further employed the test results of their initial illegal intrusion as the foundation of the warrant application. As it is nearly impossible to see how investigators were not placed in a superior position by detaining the clothes and possessions of the Petitioner in an evidencelocker for five years without a warrant, it is difficult and likewise inconceivable that the inclusion of the test results in the warrant application did not influence the judge's decision to issue a warrant or investigators decision to secure the warrant after they learned of the test results.

Remarkably, the Connecticut Supreme Court twice declined to address the issue of whether the transfer of Petitioner's property to the State Forensic Laboratory constituted an illegal seizure under the Fourth Amendment. The failure to address this issue was necessary in order to determine whether the Petitioner suffered a conversion or trespass to his property.

Ultimately, the Connecticut Supreme Court's failure to address the seizure issue resulted in the Petitioner being dispossesse of hisproperty without lawful process as req under the United States Constitution. To dat Petitioner's property taken by the State has not been taken with a warrant stated "with

particularity" as required by the Fourth Amendment since the warrant application makes no mention of Petitioner's wrist-watch alluded to by the Connecticut Supreme Court in a footnote of Petitioner's first appeal to that Court. 229 Conn. 10.

This case raises issues of national importance since the ruling in Joyce renders the Warrant Clause nugatory. According to the holding of the Connecticut Supreme Court, investigators could execute a warrant wherever they want and whenever they want so long as there is "probable cause" prior to the illegal intrusion. The Petitioner does not find this to be the holding of Murray and for these reasons respectfully requests this Court to issue a writ of certiorari to further define the parameters of the independent source doctrine.

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STATE OF CONNECTICUT - RESPONDENT

CONCLUSION

WHEREFORE, and hereby, the undersigned Petitioner asks that the PETITION FOR WRIT OF CERTIORARI be granted.

Respectfully submitted,

Wallace L. Joyce

Wallace L. Joyce, Petitioner pro se

Date: March 10, 1998